

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MARIO FLORES,)	CASE NO. 4:13 CR 00091
)	4:14 CV 02432
)	
Petitioner,)	
)	JUDGE DAN AARON POLSTER
vs.)	
)	
UNITED STATES OF AMERICA,)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
Respondent.)	

Before the Court is the *pro se* Petition to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. 2255 filed by Mario Flores. On August 14, 2013, Flores entered a guilty plea before this Court, pursuant to a written plea agreement, of one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349. Just a few weeks earlier, on July 31, 2013, Flores was sentenced to 60 months imprisonment in the Southern District of New York for unlawful possession of a firearm, in violation of 18 U.S. C. § 922(g)(1) (“SDNY Case”). As to Flores’ case before this Court, on December 2, 2013, Flores was sentenced to 18 months imprisonment, which the Court ordered him to serve consecutively to his 60 months sentence in the SDNY case.

On November 3, 2014, Flores filed the instant § 2255 Petition. Therein Flores contends that his 18 month sentence should be vacated because, prior to the Court sentencing him, the Court was not provided with a psychological evaluation of him that was conducted by psychologist Jessica Pearson, PsyD., in connection with his SDNY case. The psychological evaluation, dated March 4, 2013, was requested by Flores’ attorney in the SDNY case, and was conducted for the purpose of assessing whether Flores suffers from any cognitive deficiencies.

The evaluation concludes, among other things, that Flores “has significant cognitive deficits.”

The March 4, 2013 psychological evaluation of Mr. Flores should have been provided to the Court by either the Probation Department or Mr. Flores’ counsel, and, therefore, in the interest of justice, the Court vacates Flores' sentence. The Court will hold a resentencing hearing, which will be scheduled by separate notice, and will appoint new counsel to represent Flores. Counsel for the government, David Toepfer, has agreed to the Court holding the resentencing hearing.

IT IS SO ORDERED.

/s/Dan Aaron Polster 11/19/14

Dan Aaron Polster
United States District Judge